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### Aliens - Equal Protection Clause (Cabell v. Chavez Salido)

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## RECENT DECISIONS

ALIENS — EQUAL PROTECTION CLAUSE — *Cabell v. Chavez Salido*, 50 U.S.L.W. 4095 (Jan. 12, 1982).

Appellees, legally admitted resident aliens of the United States, filed suit for injunctive relief against officials of the County of Los Angeles, California, contending that rejection of their applications for employment as deputy probation officers violated their rights under the Equal Protection Clause of the fourteenth amendment.<sup>1</sup> The parties stipulated that rejection of two applications for deputy probation officer was based solely on a California law<sup>2</sup> that provided that only United States citizens may serve as peace officers, a category that includes the position of deputy probation officer. A three judge district court found the statute unconstitutional on its face and as applied.<sup>3</sup>

On appeal, the United States Supreme Court vacated the judgment and remanded to the district court for reconsideration in light of *Foley v. Connelie*<sup>4</sup> and *Ambach v. Norwich*.<sup>5</sup> *Foley* upheld a New York statute providing a citizenship requirement for state troopers and *Ambach* held that a state may refuse to employ aliens who have chosen not to seek naturalization as elementary and secondary school teachers. On remand, the district court found its previous decision valid. On this appeal, in a 5-4 decision, the Supreme Court reversed.

Justice White's majority opinion found the application of the strict scrutiny standard of review with respect to legally admitted resident aliens improper. White distinguished restrictions serving economic as opposed to political functions, and reasoned that the differentiation utilized by California fulfilled its political functions. "While not retreating from the position that restrictions on lawfully resident aliens that primarily affect economic interests are subject to heightened scrutiny . . . we have concluded that strict scrutiny is out of place when the restriction primarily serves a political function . . . ."<sup>6</sup>

The Court applied the two-tiered analysis described in *Sugarman v. Dougall*:<sup>7</sup> first, the specificity of the classification was examined to ascertain whether it was sufficiently tailored to serve legitimate politi-

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1. U.S. CONST. amend. XIV, § 1, cl. 4.

2. CAL. GOV'T CODE § 1031(a) (West 1980).

3. *Chavez Salido v. Cabell*, 427 F. Supp. 158 (C.D. Cal. 1977).

4. 435 U.S. 291 (1978).

5. 441 U.S. 68 (1979).

6. *Cabell*, 50 U.S.L.W. at 4097.

7. 413 U.S. 634 (1973).

cal ends, then, the classification must be one that involves discretion to formulate decisions and execute policies in a way that substantially affects individuals in the community.

The Court concluded that the statute was substantially tailored to legitimate political ends since each of the positions categorized as peace officers involves law enforcement responsibilities and that states may choose to limit delegation of coercive police powers over individuals to United States citizens. Justice White's opinion conceded that some positions within the peace officer classification were questionable, but declined to hold the statute facially defective. The classification was not precisely drawn, yet was substantially tailored to meet legitimate governmental ends. Specifically addressing the position of deputy probation officers, the Court conceded that these officers exercise authority over a narrowly limited range of individuals, but the authority would be comprehensive, coercive and often discretionary. Justice White further observed:

From the perspective of the probationer, his probation officer may personify the state's sovereign powers; from the perspective of the larger community, the probation officer may symbolize the political community's control over, and thus responsibility for, those who have been found to have violated the norms of social order. From both of these perspectives, a citizenship requirement may seem an appropriate limitation on those who would exercise and, therefore, symbolize this power of the political community over those who fall within its jurisdiction.<sup>8</sup>

In a dissent, Justice Blackmun argued that the proper standard of review was applied by the district court. He reasoned that since *Sugarman*, state discrimination against aliens should be strictly scrutinized to determine whether the articulated end is a substantial governmental objective, and whether the means are necessary and precisely drawn toward that end. Applying this standard, Justice Blackmun found the statute facially defective. He contended that the statute was cavalierly drafted, and was overinclusive and underinclusive. Furthermore, he observed that the coercive duties of a deputy probation officer do not justify its unavailability to aliens because, in defined circumstances, all private citizens, including aliens, may exercise the power of arrest. Moreover, the power of deputy probation officers is exercised over a narrowly defined group of individuals and the discretion exercised by such officers is narrowly curtailed by statute and the authority of others. Justice Blackmun concluded:

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8. 50 U.S.L.W. at 4099.

California's exclusion of these appellees from the position of deputy probation officer stems solely from state parochialism and hostility toward foreigners who have come to this country lawfully. I find it ironic that the Court invokes the principle of democratic self-government to exclude from the law enforcement process individuals who have not only resided here lawfully, but who now desire merely to help the State enforce its laws. Section 1031(a) violates appellees' rights to equal treatment and an individualized determination of fitness.<sup>9</sup>

**CARRIAGE OF GOODS BY SEA ACT — PACKAGE — LIMITATION OF LIABILITY**  
—*Smythgreyhound v. M/V "Eurygenes"*, 666 F.2d 746 (2d Cir. 1981).

Appellants filed suit in the United States District Court for the Eastern District of New York against appellees to recover cargo losses incurred when the vessel M/V Eurygenes, while en route from Japan to Europe, caught fire and caused damage to appellant's cargo. This action was transferred to the Southern District of New York and consolidated with other actions arising out of the fire. A settlement and consent decree was entered with respect to some of the claimants. One issue which remained unresolved, however, was the amount of recovery allowed for damages to three shipments, made by Universal Electric Merchandise Co., consisting of stereo equipment packed in containers. Section 4(5) of the Carriage of Goods by Sea Act (COGSA) limits recovery to five hundred dollars per package, unless a description of the item and its value appeared on the bill of lading.<sup>1</sup> Here, the stereo equipment was initially packaged in cartons, but upon loading, the carrier packaged them in containers. The bill of lading only indicated the number of cartons and containers.

Appellants maintained that the term "package" referred to each carton, while appellees maintained that the word referred to the containers in which the cartoned equipment was shipped. The district court referred the issue to Magistrate Raby. The Magistrate concluded that the parties intended each carton to constitute the COGSA "package." The district court rejected the Magistrate's findings, but found that the limitation applied to the containers. It held that the shipper

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9. *Id.* at 4103.

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1. 46 U.S.C. § 1304(5) (1976).